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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,419	01/16/2002	Timothy Nalette	67,010-021	6804

26096 7590 08/28/2003

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EXAMINER

SMITH, DUANE

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 08/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,419

Applicant(s)

NALETTE ET AL.

Examiner

Duane S. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8-4-03.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,3-8,10,11,16-21, and 23-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Birbara et al(US Patent No. 6,364,938).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Birbara et al teach a system(10) for removal of carbon dioxide including a plurality(14,14') carbon dioxide absorbent bed being formed of a secondary amine group having at least one functional nitrile group being a solid weak base ionic exchange resin(col. 1 line 50-col. 2 line 60), conduit for exhaust(34), valve to control gas flow(22,24) wherein the valves operate to switch the beds between regeneration and absorption, regeneration device being a heat exchange(col. 3 lines 50-60) or vacuum(28), and a controller(32) for controlling the valves.

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9,15,22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birbara et al taken together with Brose et al(US Patent No. 4,822,383).

Birbara et al discloses the invention essentially as claimed except for regenerating with steam as in instant claims 9 and 22. however, Brose et al does disclose regenerating with steam(24) an amine absorbent(col. 2 line 28) as an alternative to vacuum(56) regeneration which is used in Birbara et al(28). It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute steam regeneration for vacuum regeneration in that such regeneration systems are well known alternatives in the art to regenerate amine absorbents and there has been no showing of unexpected or unobvious results of using one known regeneration system over another. Brose et al additionally disclose as in instant claim 15 of a storage tank(col. 3 lines 4-5).

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Birbara et al taken together with Simonet et al(US Patent No. 3,738,084).

Birbara et al disclose the invention essentially as claimed except for a cooling system as in instant claim 14. However, Simonet et al does disclose such a cooling system(101). It would have been obvious to one of ordinary skill in the art at the time of

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the invention to include a cooling system in the system of Birbara et al in order to eliminate heat produced during adsorption as suggested by Simonet et al (col. 3 lines 50-55).

6. Applicant's arguments filed 8-4-03 have been fully considered but they are not persuasive. Applicant argues that Birbara et al is not prior art under 35 USC 102(e) as the instant application is a continuation in part and is afforded the filing date of Birbara et al. While this may be true, Birbara et al qualifies as prior art under 35 USC 102(e) as it is to another (different inventive entity) and is a published US patent. It is irrelevant that the instant application is a CIP of Birbara et al to qualify as prior art under 35 USC 102(e), see Ex Parte DesOrmeaux 25 USPQ 2040 (Bd. Pat. App. & Inter. 1992). See MPEP 2136.05 for ways to overcome rejections under 35 USC 102(e). All other arguments have been considered but are not deemed to be persuasive.

7. Applicants' amendments to the claims have overcome the 102(b) rejections to Brose et al, Simonet et al, and Yearout. Applicant's amendments have also overcome all other previous objections to the oath, drawings, and specification.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duane S. Smith whose telephone number is 703-308-3792. The examiner can normally be reached on 8:30-6:00 M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on 703-308-1261. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Duane S. Smith
Primary Examiner
Art Unit 1724

Dss
8-26-03